

ARTICLE 22**REQUIREMENTS FOR DEVELOPMENTS THAT INCREASE
THE TOWN OF WESTFIELD'S GROWTH SHARE OBLIGATION
FOR AFFORDABLE HOUSING PURSUANT TO THIRD-ROUND RULES
OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING****[Added 6-06-06 by Ord. No. 1869]**

Every development which increases the number of affordable housing units that must be addressed by the Town of Westfield's housing element and fair share plan is subject to the following:

§ 22.01. LEGISLATIVE INTENT.

The legislative intent and recitals set forth in the preamble to Ordinance No. 1869 (adopting this article) are hereby adopted and incorporated by reference herein as if set forth herein at length.

§ 22.02. APPLICABILITY.

The provisions of this section shall apply to the following developments, subject to the exemptions in § 22.03 below:

- A. **Residential developments.** Any development which results in a net increase in the number of market-rate dwelling units in the Town of Westfield. For purposes of administering this provision, "net increase" shall be construed to be an increase in the number of dwelling units existing on the subject property on January 1, 2004. A dwelling unit that was under construction on January 1, 2004, but which had not yet received a final certificate of occupancy, shall not be considered "existing" on that date for purposes of administering this provision.
- B. **Nonresidential developments.** Any development which results in a net increase in the gross floor area of any nonresidential building in the Town of Westfield of the following use groups, as defined by the International Building Code (IBC) (which has been incorporated by reference into the Uniform Construction Code (UCC)). For purposes of administering this provision, "net increase" shall be construed to be an increase in the amount of gross floor area devoted to nonresidential use from that existing on the subject property on January 1, 2004. Nonresidential floor area that was under construction on January 1, 2004, but which had not yet received a final certificate of occupancy, shall not be considered "existing" on that date for purposes of administering this provision.

<u>Use Group</u>	<u>Description*</u>
B	Office buildings. Places where business transactions of all kinds occur. Includes banks, corporate offices, government offices, professional offices, car showrooms and outpatient clinics.
M	Mercantile uses. Buildings used to display and sell products. Includes retail stores, strip malls, shops and gas stations.
F	Factories where people make, process, or assemble products. Includes automobile manufacturers, electric power plants, foundries, and incinerators. F use group includes F1 and F2.
S	Storage uses. Includes warehouses, parking garages, lumberyards, and aircraft hangers. S group includes S1 and S2.
H	High Hazard manufacturing, processing, generation and storage uses. H group includes H1, H2, H3, H4 and H5.
A1	Assembly uses including concert halls and TV studios.
A2	Assembly uses including casinos, night clubs, restaurants and taverns.
A3	Assembly uses including libraries, lecture halls, arcades, galleries, bowling alleys, funeral parlors, gymnasiums and museums but excluding houses of worship
A4	Assembly uses including arenas, skating rinks and pools.
E	Schools K - 12.
I	Institutional uses such as hospitals, nursing homes, assisted living facilities and jails. I group includes I1, I2, I3 and I4.
R1	Hotels and motels.

*Note: The descriptions in the above table are not intended to be exhaustive, and additional uses are or may be included within the use group; in all cases, the IBC definitions control. The inclusion of any use in the above table is not to be construed to mean that such use is permitted in the Town of Westfield or in any particular zoning district; such use shall only be permitted in accordance with the balance of the Land Use Ordinance or other applicable law.

§ 22.03. EXEMPTIONS.

Notwithstanding the provisions of § 22.02 above, the following developments shall be exempt from the provisions of this article:

- A. **Certain affordable housing developments.** Market-rate dwelling units within developments that provide affordable housing units in accordance with the housing element of the Town of Westfield Master Plan and the Town of Westfield's fair share plan regulations, or that address their affordable housing obligation through other applicable law, in accordance with the rules of the Council on Affordable Housing and/or in accordance with the applicable affordable housing requirements of the respective zone districts.
- B. **Government developments.** Developments of Federal, state, county and municipal governments.
- C. **Developments with prior approvals.** Approved developments that are exempt from changes in zoning regulations for specified time periods pursuant to provisions of the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and developments that have received all required permits authorizing construction prior to the effective date of this chapter, and which are constructed in accordance with said permits. Developments with permits or other approvals that expire prior to construction but subsequent to the effective date of this chapter shall not be exempt from this chapter unless such approvals are extended by the approving authority in accordance with applicable law.
- E. **Exemption upon appeal.** Upon appeal to the Town Council, a development may be exempted, in full or in part, by the Town Council from the requirements of this section if the developer proves to the satisfaction of the Council: a) that no reasonable development of the property in question is economically feasible unless such full or partial exemption is granted, and b) that such economic infeasibility is not due to action or inaction of the developer, property owner or any predecessor in title.

The Town Council may require the preparation of a pro forma or other documentation to substantiate the developer's assertion, and the Town Council may submit such pro forma or other documentation for review by a third party retained by the Town Council.

§ 22.04. DEVELOPER'S OBLIGATION.

Prior to or as a condition precedent to the grant of any approval of a development application by the Planning Board or Board of Adjustment, and prior to the issuance of any zoning approval by the Zoning Officer or issuance of any construction permit by the Construction Official, as applicable, for any development described by § 22.02 and not

exempted by § 22.03, the developer shall be required to comply with the requirements of this section and to enter into an agreement with the Town Council, in order to address the affect of the development upon the Town of Westfield's affordable housing obligation, in accordance with the following requirements:

A. Residential development.

1. A net increase (new construction less demolition) of every eight (8) market-rate dwelling units, or fraction thereof, increases the affordable housing obligation of the Town of Westfield by one (1) affordable housing unit, or fraction thereof. For purposes of making this calculation, the demolition permit must have been issued on or after January 1, 2004, otherwise the net increase is calculated based upon the new construction only.
2. For every unit increase, or fraction thereof, in the Town of Westfield's affordable housing obligation resulting from the development, the developer shall be required to increase the number of affordable housing units in the Town of Westfield by an equal number, as set forth in Paragraphs A.3, 4 and 5 below.
3. For every whole unit of increase in the Town of Westfield's obligation resulting from the residential development, the developer shall provide one affordable unit on the site or tract being developed or in another location in the Town of Westfield, in accordance with all applicable zoning regulations.

For example, a nine dwelling-unit development may address this requirement by marketing one of the nine units as an affordable unit (8 market-rate units and 1 affordable unit). Alternatively, if all nine dwelling units on the site are developed as market-rate units, the developer shall address an obligation to provide 1.125 affordable units (i.e., $9 \text{ market-rate units} \div 8 = 1.125$) by providing one or more affordable units elsewhere in the municipality.

4. For every fractional unit of increase of one-half ($1/2$) unit or more in the Town of Westfield's obligation resulting from the residential development, the developer shall provide an affordable unit on the site or tract being developed or at another location in the Town of Westfield, in accordance with the applicable zoning regulations, if the Town of Westfield or another developer is willing to provide a subsidy for any resulting fractional unit surplus. The value of said subsidy shall be calculated using the same criteria as those used to determine the value of the payments in § 22.06. If such subsidy is

provided, the developer shall not be entitled to claim any surplus credit as set forth in Subsection D below.

If neither the Town nor another developer is willing to provide such subsidy, the developer shall not be required to provide such affordable unit, but shall have the option to: a) develop an affordable unit on the site or tract being developed or at another location in the Town of Westfield, in accordance with the applicable zoning regulations, and to claim a credit for any resulting fractional unit surplus as set forth in Subsection C below, and/or b) pay a fee to the Town of Westfield in accordance with § 22.06.

5. For every fractional unit of increase less than one-half (1/2) unit in the Town of Westfield's obligation resulting from the residential development, the developer shall have the option to: a) develop an affordable unit on the site or tract being developed or at another location in the Town of Westfield, in accordance with the applicable zoning regulations, and to claim a credit for any resulting fractional unit surplus as set forth in Subsection C below, and/or b) pay a fee to the Town of Westfield in accordance with § 22.06.
6. None of the foregoing shall be construed as amending the permitted or required uses, floor area ratio, density, coverage, building height, lot area, yard setback, parking or other zoning regulation that would otherwise apply to the development.

B. Nonresidential development.

1. A net increase (new construction less demolition) of every twenty-five (25) estimated jobs, or fraction thereof, shall increase the obligation of the Town of Westfield by one (1) affordable housing unit, or fraction thereof. The number of estimated jobs shall be based on the gross floor area in square feet of new buildings or additions to existing buildings, less the gross floor area of any building to be demolished on the site, and on the use group of the development, in accordance with the following table. For purposes of making this calculation, the demolition permit must have been issued on or after January 1, 2004, otherwise the net increase is calculated based upon the new construction only.

Use Group	Description	Sq. Ft. of Gross Floor Area Generating Obligation of One Affordable Unit	Jobs Per 1,000 Square Feet
B	Office buildings. Places where business transactions of all kinds occur. Includes banks, corporate offices, government offices, professional offices, car showrooms and outpatient clinics.	8,333	3
M	Mercantile uses. Buildings used to display and sell products. Includes retail stores, strip malls, shops and gas stations.	25,000	1
F	Factories where people make, process, or assemble products. Includes automobile manufacturers, electric power plants, foundries, and incinerators. F use group includes F1 and F2.	12,500	2
S	Storage uses. Includes warehouses, parking garages, lumberyards, and aircraft hangers. S group includes S1 and S2.	125,000	0.2
H	High Hazard manufacturing, processing, generation and storage uses. H group includes H1, H2, H3, H4 and H5.	25,000	1
A1	Assembly uses including concert halls and TV studios.	12,500	2
A2	Assembly uses including casinos, night clubs, restaurants and taverns	8,333	3
A3	Assembly uses including libraries, lecture halls, arcades, galleries, bowling alleys, funeral parlors, gymnasiums and museums but excluding houses of worship.	8,333	3
A4	Assembly uses including arenas, skating rinks and pools	8,333	3
A5	Assembly uses including bleachers, grandstands, amusement park structures and stadiums.	Exclude	Exclude
E	Schools K - 12.	25,000	1

I	Institutional uses such as hospitals, nursing homes, assisted living facilities and jails. I group includes I1, I2, I3 and I4.	12,500	2
R1	Hotels and motels.	31,250	0.8
U	Miscellaneous uses. Fences tanks, barns, agricultural buildings, sheds, greenhouses, etc.	Exclude	Exclude

2. For every unit increase, or fraction thereof, in the Town of Westfield's affordable housing obligation resulting from the development, the developer shall be required to increase the number of affordable housing units in the Town of Westfield by an equal number, as set forth in Subsection B.3 below.

3. For every unit of increase, or fraction thereof, in the Town of Westfield's affordable housing obligation resulting from the nonresidential development, the developer shall have the option to: a) provide an affordable unit at another location in the Town of Westfield, in accordance with the applicable zoning regulations, and/or b) pay a fee to the Town of Westfield in accordance with § 22.06. If a developer provides an affordable unit or units which is/are in excess of the obligation, the developer shall be entitled to claim a credit for any surplus as set forth in Subsection D below, unless said surplus was subsidized by the Town of Westfield, in which case no surplus credit may be claimed.

4. None of the foregoing shall be construed as amending the permitted or required uses, floor area ratio, density, coverage, building height, lot area, yard setback, parking or other zoning regulation that would otherwise apply to the development.

C. **Mixed residential-nonresidential development.** In the case of developments involving a mixture of residential and non-residential uses, the following shall apply:

1. The affordable housing obligation generated by the residential portion of the development shall be addressed in the same manner as required for residential developments in Subsection A above.

2. The affordable housing obligation generated by the nonresidential portion of the development shall be addressed in the same manner as required for nonresidential developments in Subsection B above; provided, however, that in addition to the options in Subsection B the developer

shall have the option to address the obligation by providing affordable units on the same site being developed.

D. **Surplus units; credits.** As a means of addressing a fractional increase in the Town of Westfield's affordable housing obligation, or for other reasons, a developer may provide more affordable housing units than required. In addition, the Town Council may negotiate with a developer to provide a subsidy for the provision of more affordable housing units than required. The following provisions shall apply:

1. Any developer that provides more affordable housing units than required, or fraction thereof, which units or fractions of units have not been subsidized by the Town of Westfield, shall be credited with such surplus. If the Town of Westfield or some other entity subsidizes the creation of surplus units, the Town of Westfield or such entity shall be credited with such surplus.
2. Credits for surplus units may be applied by the owner of such credits to a subsequent development by the same developer or may be sold or otherwise transferred to other developers, who may then apply such credits to a subsequent development in the Town of Westfield.
3. The sale or other transfer of such credits shall require the approval of both parties to the transaction, and a record of such sale or other transfer shall be filed with the Town Clerk.
4. The Town Clerk shall maintain a record of: a) the creation of surplus units, credits for the same, and the owners of such credits; b) credits available to interested parties for sale or transfer, and c) prior sales or transfers of credits in the Town of Westfield. The Clerk shall make such records available for public inspection upon request.

E. **Credits for very low income units.** In accordance with COAH's substantive rules at N.J.A.C. 5:94-4.22, two units of credit shall be given for each affordable unit available to households of the general public earning thirty percent (30%) or less of median income for the housing region within which the Town of Westfield is located, as determined by the Council on Affordable Housing.

§ 22.05. REQUIREMENTS FOR AFFORDABLE HOUSING UNITS.

All affordable housing units shall be subject to the requirements of this chapter that apply to comparable market-rate housing units of the same type in the same zone district. In addition, affordable housing

units provided pursuant to this section shall be subject to the following requirements.

- A. **Units to comply with COAH rules.** All affordable units to be created shall be eligible for credit against the Town of Westfield's affordable housing obligations and to that end shall comply with all applicable regulations of the New Jersey Council on Affordable Housing (COAH).
- B. **Limitation on age-restricted units.** No age-restricted affordable units and/or affordable sales units may be credited in excess of the number of such units permitted to be credited within the Town of Westfield by COAH's regulations.
- C. **Rental obligation.** In residential or mixed-use developments involving rental housing, the affordable units to be provided shall also be rental units.
- D. **Construction phasing.** Affordable housing units, excluding such units to be funded by a payment pursuant to § 22.06, shall be built in accordance with the following schedule:

Percentage of Market-rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25 + 1 unit	10
50	50
75	75
90	100

- E. **Heating source.** Affordable units shall utilize the same heating source as market units within the development.
- F. **Administration.** The developer, in cooperation with the Town Council, shall demonstrate capacity to administer the units in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.
- G. **Low/moderate income split.** The developer, in cooperation with the Town Council, shall demonstrate that the units will have a low/moderate income split in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26. For example, in each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units. Where an odd number of affordable units are required to be provided, a majority of the units shall be low-income units.
- H. **Rents and sale prices.** The developer, in cooperation with the Town Council, shall demonstrate that the rents of sale prices of

affordable units shall be established in accordance with N.J.A.C. 5:94-7 and with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26. For example:

1. The maximum rent for affordable units within each affordable development shall be affordable to households earning no more than 60 percent of median income. The average rent for low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 10 percent of all low- and moderate-income units shall be affordable to households earning no more than 35 percent of median income.
 2. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income. Each affordable development must achieve an affordability average of 55 percent for restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type, insofar as is possible given the number of affordable units in the development.
- I. **Marketing of units.** The developer, in cooperation with the Town Council, shall demonstrate that the units will be affirmatively marketed in accordance with N.J.A.C. 5:94-7 and with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26;
- J. **Continuing affordability controls.** The developer, in cooperation with the Town Council, shall demonstrate that the units will have the appropriate controls on affordability in accordance with N.J.A.C. 5:94-7 and with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26; and
- K. **Bedroom distribution.** The developer, in cooperation with the Town Council, shall demonstrate that the units will have the appropriate bedroom distributions in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.
1. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - a. The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low- and moderate-income units;

- b. At least 30 percent of all low- and moderate-income units are two bedroom units;
 - c. At least 20 percent of all low- and moderate-income units are three bedroom units; and
 - d. The remainder, if any, may be allocated at the discretion of the developer.
 - e. Where there are an insufficient number of affordable units provided to meet the above bedroom distribution, the first unit shall be a two-bedroom unit, the second unit shall be a three-bedroom unit and the third unit shall be a one-bedroom unit.
2. Age-restricted low- and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.
- L. **Other requirements.** The developer, in cooperation with the Town Council, shall demonstrate that the units comply with all other applicable requirements of the substantive rules of the New Jersey Council on Affordable Housing, N.J.A.C. 5:94, and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.

§ 22.06. PAYMENTS IN LIEU OF DEVELOPING AFFORDABLE HOUSING.

Only when permitted by § 22.04A, B and C above, a developer may make a payment to the Town of Westfield in lieu of developing affordable housing units. The following provisions shall apply to such payments:

- A. **Amount of payment.** The amount of payments in lieu of constructing affordable units shall be negotiated between the Town Council and the developer shall be determined as follows:
1. The amount of the payment shall be based upon the cost of the Town of Westfield to create, or subsidize the creation of the same number, or fraction thereof, of affordable housing units within the Town of Westfield as the increased obligation resulting from the development, including both sales and rental unit components of the obligation, using any of the methods permitted by the New Jersey Council on Affordable Housing (COAH) as set forth in Subsection B below.
 2. Both hard and soft costs shall be included in the calculation. The Town Council may require the preparation of a pro forma to confirm that the payment is accurate and based upon realistic costs within the Town of Westfield to

create such affordable units, and the Town Council may submit such pro forma for review by a third party retained by the Town Council.

- B. **Use of payment.** Payments in lieu of constructing affordable units on site shall only be used to fund eligible affordable housing activities within the Town of Westfield, limited to the following as described and regulated by COAH's substantive rules at N.J.A.C. 5:94-4.5, 4.6 and 4.8 through 4.15, provided that such activities are eligible for credit against the Town of Westfield's affordable housing obligation, comply with all applicable requirements of COAH's substantive rules, and comply with the zoning regulations of the Town of Westfield:
1. New construction with an affordable housing component.
 2. Municipally-sponsored and 100 percent affordable programs.
 3. Alternative living arrangements.
 4. Up to ten (10) accessory apartments within the Town of Westfield.
 5. Buy-down program.
 6. Municipally-sponsored rental program.
 7. Assisted living residences.
 8. Affordable housing partnership programs.
 9. Expanded crediting opportunities.
- C. **Deposit of payment; housing trust fund.** Payments in lieu of constructing affordable units shall be deposited in a separate interest-bearing housing trust fund or deposited in a housing trust fund established pursuant to N.J.A.C. 5:94-6.11(a). The Town of Westfield Clerk shall maintain a record of name and address of entity making the payment, the amount deposited in the account, plus interest, and the purpose and amounts of all expenditures from the account. The Clerk shall make such record available for public inspection upon request.
- D. **Refund of payment.** In the event that a developer makes such a payment, but then does not proceed to develop the project that resulted in the affordable housing obligation, the developer may request a refund of the payment. Such request shall be made in writing to the Town Council. If requested, the Town Council shall refund such fee, plus any interest in the account resulting from the payment, less any administrative expenses required to administer the account. Any refund issued by the Town Council shall be construed as a failure of the applicant to satisfy a

condition precedent to the development approval and shall therefore terminate any and all rights to such development. The developer may reinstate such rights by making a new payment, with the amount of such payment to be renegotiated as set forth in § 22.06A above. The foregoing shall not be construed to extend or otherwise alter any rights to proceed with the development as established by the New Jersey Municipal Land Use Law, the rules of the New Jersey Council on Affordable Housing or other applicable law.